

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

TRANSCRIPT OF PRE-TRIAL HEARING
BEFORE THE HONORABLE GEOFFREY W. CRAWFORD
UNITED STATES DISTRICT JUDGE
MARCH 7, 2022

A P P E A R A N C E S

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1 MARCH 7, 2022

P R O C E E D I N G S

3 THE COURT: It's a pleasure to be here. We're all
4 from Vermont so it's a little different but it's also very
5 familiar. Federal courtrooms kind of run the same all over
6 the country.

I put out a brief agenda this morning just to make sure that I covered the things that I wanted to talk with you all about, but maybe you could start by introducing yourselves.

10 MS. REININGER: Good morning, Your Honor. My name
11 is Reagan Reininger. I'm an Assistant United States Attorney
12 for the Northern District of Oklahoma.

13 THE COURT: Nice to meet you.

14 MS. REININGER: Nice to meet you.

15 MS. DIAL: Good morning, Your Honor. Chantelle Dial
16 for the United States obviously.

17 MR. HASSE: Good morning, Your Honor. My name is
18 Ted Hasse. I'm defense counsel for Keith Parnell.

19 THE COURT: What's the full name?

20 || MR. HASSE: Ted Hasse, Your Honor.

THE COURT: Great. And this is Mr. Parnell?

22 DEFENDANT PARNELL: Yes, sir. My name is
23 Keith Parnell.

THE COURT: Thank you. Good to meet you all.

DEFENDANT PARRELL: Yes, you too.

1 THE COURT: Voir dire, I spoke with the staff here.
2 It runs the same way we do it at home. We'll bring in the
3 entire panel.

4 How many have we got coming in?

5 DEPUTY COURT CLERK: Probably about 50, between 40
6 and 50.

7 THE COURT: 40 and 50. We'll call up 32. They'll
8 sit in their designated spots so you'll have a seating chart.
9 You'll know everybody's name.

10 I follow the use it or lose it. We'll start with script.
11 I'll ask in a minute whether anybody has got some improvements
12 to offer on that. The peremptories, 6 and 10. Use it or lose
13 it. In other words if you pass, that extinguishes one of your
14 peremptories. Is that what you're familiar with here?

15 MS. REININGER: I've never tried a case where we've
16 done something the same so...

17 THE COURT: It's different all the time?

18 MS. REININGER: Every judge is different to me so
19 however the Court -- it will always be new to me.

20 THE COURT: All right.

21 MR. HASSE: This is clear enough.

22 THE COURT: Okay. Then two passes in a row, meaning
23 one from each side, means that everybody is content and we'll
24 have a jury at that point.

25 But obviously if you pass, you'll extinguish a challenge,

1 but you can continue on with your remaining challenges if
2 something occurs to you.

3 I don't impose any kind of complicated restriction on
4 back striking. In other words you can -- you can exercise
5 your peremptories against anybody that you like. Whether you
6 have previously passed and been content with that group makes
7 no difference. It's too complicated to try and keep track of
8 that.

9 I'll have two alternates. You'll each get an additional
10 peremptory against them. That will be a group of four, one
11 peremptory each will result in two. If you pass on that --
12 I'm not making myself clear. Number 33 and 34 will be the
13 alternates if nobody exercises a strike against the little
14 subgroup of four alternates.

15 So far so good?

16 MR. HASSE: So far so good.

17 THE COURT: Okay. In light of the content of the
18 case, my experience with cases involving sexual issues is that
19 unfortunately a lot of jurors have family type experience
20 themselves and that they need to speak at sidebar about, so my
21 idea is the three of us will meet here with each juror who
22 indicates that he or she has something that they need to share
23 and speak privately with that juror.

24 I generally don't include the defendant in those
25 conversations. I suppose if you insist, we'll have to deal

1 with it. What's your feeling about that?

2 MR. HASSE: That's fine, Your Honor, just counsel.

3 THE COURT: Just counsel. It's been a while -- I
4 was a state court judge. We did this regularly then. It's
5 been a while for me but my experience is three-quarters of the
6 jurors are going to have something to share that we need to
7 talk about.

8 Witness list, I wanted to thank the government for that
9 memo. I've been through it a couple of times. It was an
10 excellent introduction. It has a witness list.

11 Did you have anything to update or shall I read that?

12 MS. REININGER: I believe, Your Honor, the witness
13 list that I sent earlier last week is a shorter list that
14 might be a little bit more concise.

15 THE COURT: Oh, okay. I don't know that I have
16 that. I do now.

17 MS. REININGER: And, Judge, I believe it's -- we
18 have eight witnesses that have been endorsed for testimony.

19 THE COURT: Got it.

20 Mr. Hasse, I'm always super sensitive about never
21 suggesting that the defense has any obligation to call a
22 witness of course, so I what I usually do is read all of these
23 names as a witness list from counsel generally. That work for
24 you?

25 MR. HASSE: Yes, Your Honor.

1 THE COURT: Did you want to add anybody to that
2 list? No obligation, of course, but if you -- somebody that
3 might be a neighbor or something, this would be the time to
4 say.

5 MR. HASSE: Your Honor, we have submitted a witness
6 list for trial. There's some overlap between the two. I
7 believe there's two names that are not -- sorry.

8 THE COURT: That's what I was going to ask. Which
9 ones?

10 MR. HASSE: The two names that are not already on
11 the government's witness list are Anthony Parnell and Branden
12 Parnell, and of course Defendant Keith Parnell.

13 THE COURT: You want me to read his name too?

14 MR. HASSE: I don't think that will be necessary.
15 I think we'll be able to confirm with the jury whether or not
16 they know Keith Parnell right up front.

17 THE COURT: All right.

18 MR. HASSE: But, yeah, Just Anthony Parnell and
19 Branden Parnell are the two names we would ask be added to the
20 list of possible witnesses to read to the jury.

21 THE COURT: Perfect. So I'll do that. I'll read
22 all 10 as a combined potential witness list so as not to step
23 on any plans that you have.

24 MR. HASSE: Thank you, Your Honor.

25 THE COURT: Good. Okay. Additional questions? I

1 tried to hit the highlights. I'm glad to add more. I had
2 not -- my understanding is the culture in this building is
3 that typically lawyers do not participate directly in voir
4 dire so I'm glad to cover everything on my script and add
5 anything that either side wants.

6 Anything further that the government wanted to add?

7 MS. REININGER: Your Honor, the only thing I would
8 ask is -- and I think it's really going to depend on the
9 Court's ruling on the 404(b).

10 THE COURT: Right.

11 MS. REININGER: But if there's going to be testimony
12 regarding physical abuse, I would ask if the Court could
13 inquire, not specifically with just sexual abuse, but also
14 sexual and physical abuse.

15 I don't know if that's going to open up just a floodgate
16 but I know that that will be testimony that the government is
17 going to attempt to elicit from one of the victims.

18 THE COURT: The physical abuse meaning neglect type
19 abuse or -- or like disciplinary hitting type abuse?

20 MS. REININGER: I wouldn't say disciplinary hitting,
21 I would say -- I anticipate that there's going to be testimony
22 that the victim -- what caused the victim to leave was an
23 altercation that occurred with her -- with the defendant that
24 caused her to leave the home permanently. And it was an
25 incident involving strangulation.

1 THE COURT: Oh, I see. As you say, once we open
2 that box, we're going to hear a lot -- that doesn't sound like
3 the centerpiece of the case obviously.

4 MS. REININGER: Sure.

5 THE COURT: Do you think we could safely pass on
6 that?

7 MS. REININGER: Whatever the Court wishes to do.

8 THE COURT: That's my inclination because it's not
9 really a case about physical assault.

10 MS. REININGER: Sure.

11 THE COURT: Yeah. Thanks.

12 Anything more that you had in mind to kind of cover it?
13 I think the hot-button issue will be the prior experience with
14 sex abuse.

15 MS. REININGER: I'm good with what the Court has
16 proposed.

17 THE COURT: Mr. Hasse, how about from your side?

18 MR. HASSE: Your Honor, if I may add something
19 related to what was just discussed here. We of course would
20 have objected to the government eliciting testimony about the
21 one incident, an alleged choking incident. It sounds like
22 we're not going to do testimony about that because it would
23 potentially create issues.

24 The other --

25 THE COURT: We're certainly not going to do voir

1 dire about that and hear about jurors' experiences.

2 MR. HASSE: Then I misunderstood. Yeah, I think
3 we'll then -- judge, we would like to move that that testimony
4 be excluded. We can I guess address that when the Court is
5 ready.

6 THE COURT: Yep.

7 MR. HASSE: But there is -- the government has
8 signaled that they intend to elicit testimony specifically
9 about neglect type abuse, and in reference to the notice that
10 was filed by the government, one of the specific items was
11 that they -- that the children were flea bitten or covered in
12 fleas or something along those lines.

13 THE COURT: Right.

14 MR. HASSE: If that testimony is going to be
15 elicited, I would say we may need to ask the jurors about
16 whether or not they can fairly judge a case where that's one
17 of the issues or one of the factors.

18 Additionally when we're talking about what else might be
19 covered by -- in voir dire, jury selection questions, Judge,
20 we would -- we would just ask that in addition to asking the
21 jurors whether the issue of sexual misconduct ever impacted
22 their life or the life of someone close to you, I would ask --
23 because the sensitive nature of these types of accusations, I
24 would ask that the jury just be asked that for even those
25 people who are not going to want to hold their hand up and

1 say, yes, it's impacted my family, if they could be asked
2 whether or not they could fairly judge a case and keep an open
3 mind despite such allegations.

4 THE COURT: Sure, that's fine.

5 MR. HASSE: And that's all we would add to the jury
6 selection questions, Your Honor.

7 THE COURT: All right. I have a little further down
8 a note to make a plan to deal with the res gestae 404(b)
9 issues more formally. I think we're going to need an hour to
10 talk about them.

11 But I did spend time with a subject I'm hearing from the
12 government. I was not in favor of the neglect type bad acts,
13 you know, the flea stuff. I saw the sex conduct more clearly
14 as part and parcel of the entire offense, sort of the heart of
15 res gestae.

16 From the government's perspective is it necessary to deal
17 with that issue in voir dire? Because again if we ask
18 about -- the defense feels that they wish to or need to, it's
19 not the main point of the case. I would be glad for your
20 thoughts.

21 MS. REININGER: Your Honor, I think with -- as the
22 Court had earlier stated, with regards to the neglect, I would
23 say it would be the same as the physical abuse.

24 THE COURT: Right.

25 MS. REININGER: And if we're not going to mention

1 the physical abuse during voir dire, I think neglect would
2 also kind of fall into that same analysis.

3 THE COURT: Yeah. All right.

4 Mr. Hasse? I mean what is it you want me to ask them
5 exactly?

6 MR. HASSE: Just if the issue of -- whether the
7 issue of child abuse through neglect has impacted their lives
8 or the life of someone near them and, if so, if that would
9 impact their ability to fairly judge a case where such issues
10 came up.

11 Your Honor, I guess as the Court points out, you know,
12 neither the alleged physical abuse incident nor the neglect is
13 really core to this case. It's tangential. If that's the
14 logic for leaving it out of voir dire, we respectfully submit
15 that that should be the logic for excluding that sort of
16 testimony being elicited.

17 THE COURT: I'm trying my best not to make a ruling
18 on the 404(b) issue until I hear from you, but I will not ask
19 in voir dire about family history of poverty, neglect,
20 inadequate childcare type conditions. I think we'll -- I
21 don't think that's the focus of the case and I think it's
22 unlikely that that will survive the 404(b) type discussion.

23 I'll hang on to my options with respect to the physical
24 abuse for that final departure from the household, not make a
25 ruling now. I would like to hear from both of you more, but I

1 think we can get through a voir dire without asking whether
2 anybody has been in a situation in which some household member
3 was subject to physical abuse. That's going to send us down
4 an alley.

5 MR. HASSE: Thank you, Your Honor.

6 THE COURT: All right. But I will ask for those
7 people who haven't raised their hands in response to the
8 family history or connection with sexual abuse whether they
9 can fairly hear the case given its -- given the type of
10 allegations.

11 All right. I got a helpful note from our court officer
12 about stipulations and I have -- I think I have a note about
13 those too before we get there.

14 Pseudonyms, did you wish to call the two victims by their
15 full names or by their initials? I wasn't quite sure.

16 MS. REININGER: Your Honor, I think we at this time
17 will move to call the victims by their full name and not refer
18 to them as minor victims or MV 1 or 2 or their initials.

19 THE COURT: They're women in their late twenties?

20 MS. REININGER: They are now women in their late
21 twenties. And I would advise the Court that I think both of
22 them have been open and public about their abuse and so I
23 don't think that the need for anonymity is really necessary at
24 this time.

25 THE COURT: Fair enough.

1 That work for you, Mr. Hasse?

2 MR. HASSE: Yes, Your Honor.

3 THE COURT: Okay, thanks. All right. The part that
4 is less familiar to a judge from Vermont, the jurisdictional
5 elements. How did the government plan to handle that? I know
6 you've been talking about a stip.

7 MS. REININGER: Your Honor, I think we've signed two
8 stipulations and I don't know what's happened to them. They
9 might be floating around somewhere. But we've agreed to
10 stipulate to not only the jurisdictional element that this
11 occurred in Indian Country, but also to the Indian status of
12 the parties. And so I don't know if the Court wishes to mark
13 those as exhibits or how to proceed.

14 THE COURT: Sure. What I think I will do is I'll
15 have a brief colloquy with Mr. Parnell to make certain that
16 he's on board for this and understands it. We'll mark them as
17 exhibits and I suppose the way to do it is to read them aloud
18 at some point during the trial and I'll have to go back
19 through the jury charge to make sure that the jury fully
20 understands that they don't need to make that decision.

21 MS. REININGER: Okay. Thank you, Your Honor.

22 MR. HASSE: Your Honor, I have here the signed
23 copies of the two stipulations.

24 THE COURT: Great.

25 MR. HASSE: Signed by all of the parties in

1 preparation for your colloquy with Mr. Parnell.

2 THE COURT: If you don't mind handing them up, we'll
3 mark them as Court's Exhibits 1 and 2.

4 DEPUTY COURT CLERK: Would you like to see those
5 first?

6 THE COURT: Yes.

7 All right. Mr. Hasse, with your permission I'll ask
8 Mr. Parnell a couple of questions. Why don't we place him
9 under oath.

10 DEPUTY COURT CLERK: Mr. Parnell, would you please
11 raise your right hand.

12 (DEFENDANT SWORN)

13 DEFENDANT PARNEll: Yes, ma'am.

14 DEPUTY COURT CLERK: Thank you.

15 THE COURT: Mr. Parnell, I appreciate your courtesy
16 in speaking with me. I just want to review these two
17 stipulations.

18 You can have a seat, it's fine.

19 What I'll do is read them aloud and then ask you a couple
20 of questions that are intended to make sure that you've
21 yourself agreed to these stipulations, that they're accurate,
22 had a chance to discuss them with your lawyer, that they're
23 voluntary actions; okay? That's my only purpose in asking you
24 these questions.

25 DEFENDANT PARNEll: Yes, sir.

1 THE COURT: All right. The first one reads:
2 Stipulation. Defendant Parnell's Indian status. The United
3 States of America, represented by Reagan Reininger and
4 Chantelle Dial, Assistant United States Attorneys, and Keith
5 Duane Parnell, represented by Theodore Hasse, hereby stipulate
6 and agree that at all times relevant to the charges in this
7 case Keith Duane Parnell was and is a member of the Cherokee
8 Nation, a federally recognized Indian Tribe, with some quantum
9 of Indian blood and therefore is an Indian person.

10 Therefore because the parties agree that Defendant
11 Parnell is Indian, this element is proven beyond a reasonable
12 doubt for Counts 1 through 10 of the indictment. The
13 government need not present additional evidence that Defendant
14 Parnell is Indian.

15 I understand, Mr. Parnell, that absent a stipulation or
16 an agreement between the parties that the government would
17 have to prove your status as a member of the Cherokee Nation
18 or in some other ways a person of Indian descent.

19 DEFENDANT PARNELL: I am.

20 MR. HASSE: They would have the same burden of
21 proof, beyond a reasonable doubt, that you were in fact an
22 Indian in order to come into court with this type of charge.

23 DEFENDANT PARNELL: I do understand. I'm sorry.

24 THE COURT: Okay. No, I'm sorry. It was a long
25 question.

1 So you understand that if you didn't agree to the
2 stipulation, that the government would have the obligation of
3 proving your Indian descent in court.

4 DEFENDANT PARRELL: Yes, sir.

5 THE COURT: And is it in fact true that you are a
6 member of the Cherokee Nation with some quantum, some amount,
7 of Indian blood in your descent?

8 DEFENDANT PARRELL: Yes, sir, that's true.

9 THE COURT: Okay. Did you have a chance to talk
10 about privately the legal effect of this stipulation with your
11 attorney before now?

12 DEFENDANT PARRELL: Yes, sir.

13 THE COURT: All right. And is it your voluntary
14 action to stipulate to your Indian status for purposes of our
15 case today?

16 DEFENDANT PARRELL: Can you repeat that question?

17 THE COURT: Is it your voluntary decision to
18 stipulate to your Indian descent for purposes of our case
19 today?

20 DEFENDANT PARRELL: Yes, sir, it is.

21 THE COURT: All right. I'll turn to the second
22 stipulation which concerns the location of the alleged
23 offenses and I'll read that aloud.

24 The United States of America, represented by Reagan
25 Reininger and Chantelle Dial, Assistant United States

1 Attorneys, and defendant Keith Duane Parnell, represented by
2 Theodore Hasse, hereby stipulate and agree that at all times
3 relevant to the charges in this case the following addresses
4 were located within the Northern District of Oklahoma and
5 within the Cherokee Nation Indian Reservation and thus Indian
6 Country pursuant to 18 U.S.C., Section 1151.

7 There are six addresses, 904 Southeast 22nd Street,
8 Pryor, Oklahoma; 501 North Taylor Street, Apartment 135 -- or
9 Unit 135, Pryor, Oklahoma. 116 South Indianola Street, Pryor,
10 Oklahoma; 729 East 460 Road, Pryor, Oklahoma; 1925 North 4364
11 Road, Pryor, Oklahoma; 321 North Mayes Street, Pryor,
12 Oklahoma.

13 The stipulation reads further: Therefore because all
14 parties agree that the above addresses are within Indian
15 Country, this element is proven beyond a reasonable doubt for
16 Counts 1 through 10 of the indictment. The government need
17 not present evidence the locations of the alleged conduct in
18 Counts 1 through 10 of the indictment were within Indian
19 Country in the Northern District of Oklahoma.

20 Similar questions, Mr. Parnell, you understand that if
21 you did not agree to this stipulation that the government
22 would have the obligation of proving that the six resident
23 addresses were located within the Cherokee Nation Indian
24 reservation?

25 DEFENDANT PARRELL: I understand.

1 THE COURT: In other words that would be a legal
2 element of the charge, the charges against you, and the
3 government would have the burden of proof on that question.
4 Do you understand?

5 DEFENDANT PARRELL: I do understand.

6 THE COURT: Okay. And do you understand that by
7 agreeing to the stipulation the government will not be
8 required to put on evidence on the issue, the location of
9 these six addresses, and the jury will be informed that the
10 government has met its burden of proof on the -- on the
11 location element.

12 DEFENDANT PARRELL: Yes, sir. I understand.

13 THE COURT: All right. And is that -- is it in fact
14 the case true to your knowledge that the six addresses lie
15 within the Cherokee Nation Indian Reservation?

16 DEFENDANT PARRELL: It's true.

17 THE COURT: Okay. And did you reach this
18 stipulation voluntarily?

19 DEFENDANT PARRELL: Yes, sir.

20 THE COURT: And did you do so after speaking
21 privately with your lawyer about it?

22 DEFENDANT PARRELL: Yes, sir.

23 THE COURT: Okay. I'll accept both stipulations.
24 We've had a chance to talk and they're voluntary and made with
25 legal representation and advice and that will satisfy the

1 government's burden of proof on these two jurisdictional
2 elements.

3 From the government anything further regarding the
4 stipulations?

5 MS. REININGER: Nothing, Your Honor.

6 THE COURT: All right. Mr. Hasse?

7 MR. HASSE: Nothing, Your Honor.

8 THE COURT: All right. Charge conference. What I
9 thought we might do is tomorrow afternoon let the jury go
10 early so we don't use up their time, meet at 4:00. I know
11 that charges always can be improved on and I can count on both
12 of you to do that. Is there major surgery required or did
13 they look approximately right?

14 MS. REININGER: I think they look good, Your Honor.
15 There were small changes but nothing that requires too much
16 time.

17 THE COURT: Good.

18 MR. HASSE: There may be a couple that are standard
19 in the Tenth Circuit that we might ask but certainly not major
20 changes that we would seek, Your Honor.

21 THE COURT: Okay. If you could let me know -- you
22 mean some whole paragraphs of standard model charge type
23 language?

24 MR. HASSE: Yes. Tenth Circuit model charge, we may
25 propose one or two additional ones that are fairly standard.

1 THE COURT: If you can just give me a note, say, by
2 the end of the day today, that will give me a head start on
3 it.

4 MR. HASSE: Thank you, Your Honor.

5 THE COURT: And improvements are welcome. I take no
6 pride of authorship of these things. My only goal is to get
7 them right so I welcome edits and improvements.

8 And we'll need to find time as we've already said to talk
9 about the res gestae 404(b). I was thinking the end of the
10 day today. Can we stay out of those topics for purposes of
11 opening and evidence today or do we need to launch right into
12 it now?

13 MS. REININGER: Your Honor, I think it -- I would
14 intend to give the jury an idea of the evidence that they are
15 going to hear and so I -- I would ask to do the 404(b) before
16 opening just so that we know what case we're going to be
17 presenting.

18 THE COURT: Maybe do it now.

19 Taking it up now, Mr. Hasse, does that work for you?

20 MR. HASSE: Yes, Your Honor.

21 THE COURT: What time will the jury likely be
22 through with its orientation?

23 DEPUTY COURT CLERK: Probably 9:20 to 9:30.

24 THE COURT: All right. Now would be the time.

25 Anything else we need to address before we take up that

1 substantive issue?

2 MS. REININGER: I think we can address the exhibits.

3 I think there's been some agreements in reference to
4 preadmission of some exhibits and I think just putting on the
5 record where the parties were with reference to the agreements
6 if the Court wishes to do that now.

7 THE COURT: You mean to admit some exhibits now by
8 agreement?

9 MS. REININGER: Yes.

10 THE COURT: Let's do it. Which ones are not
11 objected to?

12 MS. REININGER: It is my understanding that the
13 Government's Exhibits 1 through 7 will be admitted. We have
14 an agreement for preadmission. I -- on our exhibit list I
15 also marked 8 through 11. I marked those just on the
16 precautionary that we need to maybe, you know --

17 THE COURT: Refresh or something?

18 MS. REININGER: Refresh a recollection, but we have
19 no intention of actually admitting those unless necessary.

20 With regards to defense counsel's exhibits, I believe
21 it's my understanding, and counsel can correct me if I'm
22 wrong, that we have no objection to the admission of Exhibits
23 Number 1 and Number 2. That Number 3 was withdrawn. That
24 Number 4, 5, 6, 7, we would agree to those being preadmitted.
25 And then Defense Exhibits 8, 9, 10, 11, 12, 13, 14 and 15 are

1 social media posts that the victims may have commented on and
2 at this time it's my understanding that those were -- are not
3 going to be offered for admission unless it becomes necessary
4 by the victim's testimony in court.

5 THE COURT: Oh, you mean as a prior inconsistent?

6 MS. REININGER: As a prior inconsistent statement.

7 THE COURT: All right.

8 MS. REININGER: It's my understanding that Exhibit
9 Number 16 has been withdrawn as well as Exhibit 17, and that
10 Exhibit 18 and 19, if counsel -- I don't recall if that was --
11 if we have an agreement that those were not going to be --

12 MR. HASSE: Right, subject to the same caveat as to
13 8 through 15. We're not going to seek to publish to the jury
14 unless it becomes necessary through the testimony.

15 THE COURT: For the record, why don't we back up and
16 take these a little more formally starting with the
17 Government's 1 through 7. All photographs.

18 Any objection, Mr. Hasse, To Government's Exhibits 1
19 through 7?

20 MR. HASSE: We do not object to Government's Exhibit
21 1 through 7.

22 THE COURT: All admitted. And 8 through 11 aren't
23 offered at this time?

24 MS. REININGER: Correct, Your Honor.

25 THE COURT: So I'll admit 1 through 7 by agreement.

1 Turning to the defendant's exhibits, I appreciate a
2 summary but I kind of lost track of it. Why don't we take it
3 one at a time.

4 Any objection -- which ones are going to be offered as
5 kind of direct evidence in your case, not -- not for
6 impeachment depending on the testimony?

7 MR. HASSE: So to keep it simple 1 through 7 are
8 pictures which I believe we have an agreement that the
9 government will stipulate to.

10 THE COURT: Okay. 1 through 7, excluding 3, which
11 doesn't exist.

12 Any objection?

13 MS. REININGER: No, Your Honor.

14 THE COURT: So 1 through 7 are all admitted without
15 objection.

16 MR. HASSE: 8 through 15, as the Assistant U.S.
17 Attorney accurately stated, we're not seeking to admit and
18 publish to the jury at this time and we are planning to only
19 do so if it becomes necessary through the testimony so we
20 don't have an agreement on those.

21 My understanding -- and then the same with 18 and 19. 16
22 and 17 have been withdrawn, Your Honor. The next one, 19,
23 there is no agreement on. My understanding is the
24 government -- we offer a video, Defendant's Exhibit 20, That
25 the government would stipulate to at this time, along with 22.

1 THE COURT: I'm sorry. So --

2 MR. HASSE: 20 and 22 are stipulated to by the
3 government. 21 the government has not stipulated to.

4 THE COURT: All right. So just so I catch up with
5 you, 8 through -- through 19 are not offered at this time.

6 There's no stipulation. And which are the stipulated videos?

7 MR. HASSE: Defendant's Exhibits Number 20 and 22.

8 THE COURT: 20 and 22?

9 MR. HASSE: Correct.

10 THE COURT: Any objection to 20 and 22?

11 MS. REININGER: No, Your Honor.

12 THE COURT: So 20 and 22 are admitted.

13 MR. HASSE: My understanding is that 23 and 24,
14 Defendant's Exhibits 23 and 24, are stipulated to by the
15 government.

16 MS. REININGER: Yes, Your Honor.

17 THE COURT: 23 and 24 are admitted.

18 MR. HASSE: 25 and 26 are not. 27 is stipulated by
19 the government.

20 THE COURT: 27 okay?

21 MS. REININGER: 25 I have no objection to.

22 THE COURT: 25 is offered?

23 MS. REININGER: If that's what counsel --

24 MR. HASSE: Yes. I misspoke.

25 Thank you, Counsel.

1 25 as well.

2 THE COURT: All right. 25 is admitted without
3 objection?

4 MR. HASSE: Right. 26 is actually withdrawn.

5 THE COURT: Okay.

6 MR. HASSE: 27 is agreed by the government. 28 and
7 29 will be withdrawn along with Number 30 is withdrawn.

8 THE COURT: So 27 is admitted both by agreement?

9 MR. HASSE: Right.

10 MS. DIAL: Yes, Your Honor.

11 THE COURT: 27 is in.

12 MR. HASSE: While the government was willing to
13 agree to 30, we will not be using Exhibit 30.

14 THE COURT: So 30 is withdrawn?

15 MR. HASSE: That's correct. And then 31 there is no
16 agreement on that and -- well, there is an agreement to the
17 extent that defendant agrees not to seek to have that
18 published to the jury unless it becomes necessary through the
19 testimony.

20 THE COURT: All right.

21 MR. HASSE: And finally, although the government
22 agreed to 32, we will not be offering that.

23 THE COURT: 32 is withdrawn. All right. So the
24 only -- the Defendant's Exhibits that have come in by
25 agreement are 1 through 7, all family photos. 20, a video.

1 22, another video. 23, 24, 25, photos, and 27, another
2 photo.

3 MS. REININGER: Correct, Your Honor.

4 THE COURT: All right. Why don't we take time now
5 to talk about the res gestae 404 issues.

6 Ms. Reininger.

7 MS. REININGER: Your Honor, I would briefly like to
8 make a correction to my notice that was filed specifically on
9 Page 3, Paragraph Number 9. In the notice I had indicated
10 that towards the end that K. B. will testify that when the --
11 when visiting the defendant she recalled a time when the
12 defendant used his fingers to rub her clitoris while siblings
13 were asleep.

14 That's actually going to be testimony in regards to Count
15 4, so it's not actually 404(b) evidence or 413 evidence, but
16 is actually evidence substantive to the count.

17 THE COURT: Got it. What page is that?

18 MS. REININGER: Page 3, Paragraph Number 9. Number
19 9 towards the end of that identified paragraph.

20 THE COURT: Okay.

21 MS. REININGER: Your Honor, with regards to the 11
22 instances that the government wishes to admit are 11 instances
23 that I think describe for the jury the life that these
24 children were living in their home during the abuse that they
25 endured.

1 I think the evidence gives the jury a complete picture of
2 their testimony and it gives the jury a complete picture of
3 their life that they were living within the family and within
4 the home.

5 The evidence that we are seeking to admit not only is res
6 gestae evidence but it also sets the story and sets the
7 beginning of how the abuse that they endured developed
8 over time.

9 It is clear from the very beginning the evidence that the
10 government is -- is attempting to elicit explains why the
11 victims at young ages did not disclose the abuse that they
12 were subjected to.

13 It starts with, I believe it's Paragraph 1 and Paragraph
14 2, where the victims were -- specifically Kelsey Parnell
15 Blaylock, or K.B., was told when she did tell her mother, her
16 aunt, that something was going on, that the defendant told her
17 that this was their secret and that she wasn't supposed to
18 tell anyone and that if she did talk about it, that she could
19 potentially never see her family again.

20 So these types of instance that developed over this ten
21 years of abuse explained to the jury why they didn't disclose,
22 why they continued to allow the behavior to occur to them by
23 their father, and it gives the jury a total picture that this
24 wasn't just ten isolated incidents that were occurring in
25 their home but there was actually more abuse that was

1 occurring and it really just develops why -- why they did what
2 they did and when they disclosed when they did.

3 So for those reasons and the fact that these are not more
4 prejudicial than probative we would ask the Court to allow the
5 government to seek that testimony.

6 THE COURT: All right. Thank you.

7 Mr. Hasse, how do you see it?

8 MR. HASSE: Your Honor, practically speaking we
9 understand it would be difficult to have the complaining
10 witnesses come and testify without presenting potentially some
11 facts that aren't directly related to the 10 counts in the
12 indictment, and with regards to that testimony and those facts
13 that, you know, are most relevant that may comprise res
14 gestae, we're not going to object to that testimony being
15 elicited from the complaining witnesses.

16 However, as we touched on earlier, Your Honor, there
17 seems to be some testimony identified by the government here
18 which we feel would fall outside of that. And once again it
19 would be that testimony, specifically with regards to this one
20 incident of physical abuse that's being alleged by one of
21 the -- one or both of the complaining witnesses, that the
22 defendant Keith Parnell allegedly some perhaps 13 years ago,
23 14 years ago, choked one of the complaining witnesses in an
24 argument.

25 That doesn't seem to be at the core of this case. That

1 seems to be, one, not relevant; and, two, should be excluded.
2 If the Court felt it was relevant, it should be excluded under
3 403 as unfairly prejudicial, outweighing probative value.

4 We would make that objection also with regards to
5 paragraph 4. And on page 2 -- I should say bullet point 4 on
6 page 2 of the government's notice, that is ECF Document 34,
7 the second -- well, first and second sentences in that bullet
8 4 that the Green Country Mobile Home Park in Pryor, Oklahoma,
9 the trailer was infested with fleas. K.B. will testify that
10 everyone would be eaten alive by fleas.

11 Here we're getting into allegations of there being
12 neglect, child abuse through neglect. We think that's not
13 core to the case. We think it certainly should be excluded
14 under 403. We think it's not relevant under 401. We would
15 ask that be excluded.

16 With 5, item 5, here we have allegation that she told the
17 teacher her family did not have enough food to eat at the
18 house. Again I'm afraid we're getting well beyond what is at
19 the core of these once we're getting into allegations from,
20 you know, 15 years ago that there was, you know, again
21 neglect.

22 We would ask that the government not elicit testimony
23 about physical abuse, Your Honor, and not elicit testimony
24 regarding child abuse through neglect.

25 THE COURT: All right. Here is how I'll rule. The

1 evidence that's summarized in paragraphs 1 through 11,
2 excluding 9, which is now offered as substantive evidence, is
3 offered either as res gestae evidence concerning the full
4 scope and context of the defendant's conduct as it relates to
5 the ten charges or alternatively as 404(b) evidence of
6 defendant's intent, preparation and plan.

7 In assessing the government's proffer the Court looks at
8 the issues of admissibility and relevance from the
9 government's perspective as the proponent of the evidence and
10 describing the evidence as I will in a minute. In other words
11 the Court makes no judgment itself about the truth of the
12 offered testimony, rather the Court's perspective can be
13 expressed this way and accepted by the jury. The testimony is
14 potentially relevant on the following issues.

15 So I want to make sure that Mr. Parnell understands that
16 I'm not making any judgment myself about what happened. It's
17 an evidentiary ruling, not a fact-finding effort.

18 The evidence all comes from the two victims whose names I
19 will now learn, Kelsey Blaylock and Jasmine Parnell, twin
20 sisters. It concerns their childhood commencing at age five
21 and continuing for a decade or more until in most respects age
22 15.

23 The proffered evidence includes descriptions of the 10
24 acts offered by the government to prove the 10 offenses but it
25 also includes description of other uncharged acts as well as

1 communications between the defendant and the two victims,
2 primarily request that they submit to his conduct and that
3 they tell no one.

4 The testimony also includes some description of the poor
5 living conditions as they described them under which they were
6 raised and it includes a description by Jasmine Parnell of an
7 incident when she was 17, after the charged conduct, which she
8 states the defendant requested sex from her and she declined.

9 The testimony from the two victims about the charged
10 conduct itself is not challenged on grounds of admissibility,
11 rather, as I understand the case, the defendant's perspective
12 is that it's a fabrication, though I don't know that for sure.
13 We'll wait to see as the defense unfolds. That of course
14 presents a jury question. It's not -- doesn't raise issues
15 under be 404(b) .

16 The testimony about the communications between the
17 defendant and the daughters and the uncharged sexual conduct
18 is admissible and the Court's view is res gestae evidence,
19 it's evidence that's intrinsic to the 10 charges. It concerns
20 defendant's access to his children, the nature of the
21 relationship and communications with their father, the
22 escalating nature of his sexual demands as these are described
23 in the government's proffer and the reasons the children
24 submitted.

25 It's in short a description of long-running sexual

1 conduct, some charged and some not, but the entire story is
2 admissible because it describes the manner in which the
3 defendant carried out this series of offenses over a period of
4 about a decade.

5 The Court will exclude one portion of the proposed
6 testimony. The government offers evidence that the defendant
7 raised the daughters and other children in conditions of
8 poverty and neglect. There's proposed testimony about
9 flea-ridden bedding and other lack of food, other inadequate
10 care.

11 That testimony is not relevant to the sexual crimes
12 alleged by the government. The defendant is not charged with
13 neglecting or endangering his children in those ways.

14 Testimony about living conditions in the family's home is not
15 part of the intrinsic res gestae evidence concerning the 10
16 charged offenses and I will exclude it on grounds that it
17 qualifies neither as 404(b), bad act evidence, or of -- as res
18 gestae. It concerns different issues that are not really
19 related to the sex charges in this case.

20 The Court will permit the testimony about the defendant's
21 conduct in the semi trailer with Jasmine Parnell when she was
22 17. That testimony further develops and if believed
23 illuminates the sexualized content of his relationship with
24 his daughter as he experienced it and tends to support and
25 confirm her testimony about his conduct when she was younger.

1 So the primary reason for admitting all but a small portion of
2 the Paragraphs 1 through 11 is res gestae.

3 Addressing the 403 balancing test, the Court considers --
4 considered multiple factors on both sides of the test. These
5 include the following: A, the uncharged conduct is described
6 through firsthand testimony from live witnesses who will be in
7 court.

8 B, if accepted by the jury, it's highly probative since
9 it supports their account of prolonged sexual abuse by the
10 father.

11 C, it's seriously disputed by the defendant, as I
12 understand the case, who has raised the defense of
13 fabrication.

14 D, it's not the only evidence available since the same
15 victim witnesses can describe the actual conduct comprising
16 the 10 alleged offenses but in its scope and reach it's
17 important evidence that from the government's perspective the
18 witnesses are not making up a story. There is no alternative
19 way to describe the relationship over the years of their
20 childhood with their father.

21 E, because the uncharged conduct is consistent with the
22 description of charged conduct, it's not likely to result in a
23 verdict based on facts or concerns unrelated to the case.

24 Similarly, F, evidence of uncharged conduct is not likely
25 to distract the jury into considering irrelevant issues such

1 as the family's poverty or the treatment of the other
2 children. That really was the reason that I excluded the --
3 the flea testimony and the lack of food testimony.

4 G, the testimony is unlikely to require additional court
5 time.

6 And, H, the testimony was highly probative on one
7 particular issue which is the issue of late report or
8 fabrication, the course of the relationship between the
9 defendant and the children, including uncharged conduct and
10 communications may explain to the jury why the victims waited
11 for so many years to make their -- to make the conduct known.

12 So as I balance all of these factors I think that the
13 balance comes down squarely in favor of admissibility with all
14 but the physical abuse testimony.

15 I neglected to mention the Paragraph 10, the
16 strangulation issue. I think that is part of the res gestae
17 evidence concerning the scope of the defendant's relationship
18 with his daughters and is fairly in the case.

19 To complete this discussion I would also admit the
20 evidence under Rule 404(b), if believed by the jury, the
21 description of uncharged conduct would show the defendant's
22 intent to carry out a long-running course of sexual abuse as
23 well as the progression of this conduct with each of the two
24 children separately and for many years unknown to the other
25 would be admissible to show the full nature of his modus

1 operandi and the similarities of his treatment of each child.

2 The same analysis of the Rule 403 factors applies, and I
3 won't repeat it, but as this discussion indicates the stronger
4 ground for admissibility is the res gestae analysis under Rule
5 401 of the testimony is relevant to the government's
6 description of the crimes. Rule 401(4) is not proposed as a
7 basis of admissibility so I haven't addressed it.

8 Was there a reason that I overlooked that Rule 401(4)
9 isn't in play?

10 MS. REININGER: No, Your Honor.

11 THE COURT: It's just not part of the presentation?

12 MS. REININGER: Yes, Your Honor.

13 THE COURT: All right. Fair enough.

14 So I will admit all of that. You know the only detail I
15 wanted to make sure I understood, there is reference to an
16 affair with the sister-in-law. And that may strike a chord
17 with jurors that it's kind of a different issue from the child
18 sex abuse issues. Is that necessary to get into or is that --
19 I don't know quite how the government saw it.

20 MS. REININGER: The only reason that I would move to
21 admit that evidence is because it explains that at one point
22 the defendant leaves the home.

23 THE COURT: Right.

24 MS. REININGER: That he was kicked out of the home
25 and that then the children were going to visit their father at

1 a different and separate location. And then at some point mom
2 and dad do reunite and begin living together again in another
3 home.

4 So it just kind of tells, you know, why he left and that
5 the children were now going to, I believe, it's like a seventh
6 home in their childhood.

7 THE COURT: Right. Do you have a -- when I raise an
8 issue, I'm always a little worried that I'm making trouble
9 over nothing. Do you have a view about that?

10 MR. HASSE: Your Honor, it's the defense's view that
11 it's certainly appropriate to talk about the fact that Keith
12 Parnell was outside of the home, and certainly it's going to
13 come up that there was, you know, spousal strife between
14 Mr. Parnell and his ex-wife. It doesn't seem necessary from
15 where we're standing to talk about him having allegedly been
16 unfaithful. It seems unnecessary.

17 We would ask that that testimony not be elicited, that
18 this just be addressed by the fact that Mr. Parnell and his
19 ex-wife were not getting along and he was kicked out. We
20 don't dispute that.

21 THE COURT: How about from the government's side?
22 We just say he left as a result of a family dispute?

23 MS. REININGER: Sure. Your Honor, I would point out
24 that the entire testimony we're eliciting here is that he was
25 unfaithful to his wife during this time so it's just one party

1 for another really at this point. I mean he was cheating on
2 his wife with his children, he was cheating on his wife with
3 his sister-in-law.

4 THE COURT: I know, I'm just trying to focus on what
5 the case is really about.

6 MS. REININGER: Yes, Your Honor.

7 THE COURT: So perhaps you could -- who is going to
8 testify about that issue?

9 MS. REININGER: I believe not only Jennifer Parnell,
10 the wife, but I believe that Kelsey and Jasmine Parnell would
11 also testify to it. And I'm more than happy to instruct them
12 prior to their testimony that -- to limit their testimony to
13 just that he moved out.

14 THE COURT: Yeah. We can say as a result of a
15 family dispute.

16 MS. REININGER: Sure.

17 THE COURT: Yeah. Good. Thanks.

18 Any more on that issue? As I kind of, you know, I worked
19 through some of this last night obviously. As I read it I
20 will -- in light of the testimony about the physical abuse I
21 will ask the jury whether anybody has had that type of
22 experience within their family that would color their thoughts
23 as you had requested, Mr. Hasse. I think it's in the case now
24 and I don't want to neglect it.

25 MR. HASSE: Thank you, Your Honor.

1 THE COURT: All right.

2 MS. REININGER: Judge, I just would ask -- just to
3 clarify a few things so I can make sure that we stay within
4 your order.

5 THE COURT: Yes.

6 MS. REININGER: With regards to the allegation in
7 paragraph 4, I understand we will instruct the witnesses to
8 not discuss the fleas. But we further will be talking to the
9 victims and I presume other witnesses about sleeping
10 arrangements within the home, where the children slept. I
11 think that's relevant to -- to how the incidents occurred.

12 Would the government be permitted to inquire of the
13 witnesses -- of the sleeping locations? I believe there's
14 going to be testimony that at one point all the children, all
15 five children, shared a bed, a mattress, in one of the
16 bedrooms together.

17 You know that's going to appear that they're poor, that
18 they're -- that there's some sort of neglect in the home but I
19 think it's relevant to be able to explain the sleeping
20 arrangements.

21 THE COURT: Right.

22 MR. HASSE: If I may, Your Honor, we don't object to
23 testimony being elicited that all of the kids were sleeping
24 together and the sleeping arrangements. We can see that
25 that's relevant.

1 THE COURT: That's how I saw it as well.

2 MS. REININGER: Just so I'm clear as well is the
3 government permitted to inquire of Jasmine Parnell that she
4 had made a report at school that required DHS coming to the
5 home?

6 THE COURT: I think it just invites trouble because
7 the report was about not enough food in the fridge; right?

8 MS. REININGER: Yes, but then the reaction by the
9 family was -- specifically the dad is that you can't say what
10 happens in our home or you'll be taken away. And I think this
11 is what also builds into her disclosure, or lack thereof,
12 because of these earlier occurrences that may not have been
13 related to the sexual abuse but that she -- will play into her
14 mindset as to why she started to keep quiet about things that
15 were happening inside the home.

16 THE COURT: Yeah, right.

17 MR. HASSE: Your Honor, based on the complaining
18 witness statements the government is still going to be able to
19 get in that testimony about the defendant allegedly having
20 told them they can't tell anybody. There's elsewhere in their
21 statements where they claim that -- specifically Kelsey
22 Blaylock claims that she tried to bring up the fact that
23 something had happened and that that specific thing happened.
24 She alleges that defendant Keith Parnell told her, well, you
25 can't say that otherwise daddy will be taken away.

1 So this isn't the only way that they get in that kind of
2 testimony. They're already getting in that testimony in a
3 way. Adding this would be potentially cumulative.

4 THE COURT: In paragraph 2, I think, I saw it
5 there.

6 MS. REININGER: Yes, Your Honor, as it relates to
7 Kelsey Parnell the other victim.

8 MR. HASSE: That's right. It is -- thank you, Your
9 Honor. It is mentioned here in the government's notice so,
10 yes, this testimony will be elicited. It's not the only way
11 to get it in and because of the prejudicial manner of the rest
12 that's in item 5 on page 2 of their notice we suggest that
13 this just be left out.

14 MS. REININGER: And, Your Honor, that goes -- I
15 agree that the government is permitted to get it in through
16 the elicited testimony as identified in paragraph 2, but that
17 goes to Kelsey Parnell, a different victim. And I think these
18 victims should be treated individually and not as a whole and
19 what happened to one not necessarily does the other victim
20 have any knowledge of that and so I think to be able to
21 discuss her -- Jasmine Parnell's mindset into what she was
22 feeling, what she thought, where her mind was at, we would
23 need to be able to discuss that she had attempted to make some
24 report of some kind at school and that she was met with
25 opposition at her house and was told not to do that again,

1 otherwise she would suffer consequences.

2 THE COURT: I take your point. Here is the trouble
3 as I see it from the outside which is that since the jury
4 won't hear about the lack of food incident and since they have
5 heard a lot at this point about sex and incest, they're
6 going -- the logical assumption was that she went to the
7 school nurse and talked about what was happening with her dad
8 and that wouldn't be accurate since it was actually about a
9 different thing.

10 So it's always the problem when we begin to kind of edit
11 the facts and get some portion in. I think if the complaint
12 about the lack of food doesn't come in, I -- I don't have any
13 real alternative except also to exclude the defendant's
14 statement to her that if she told people what happens in that
15 house, the kids would be taken away. Because otherwise we
16 risk creating a false impression that there was some early
17 complaint about the sexual conduct, which there wasn't.

18 You see what I mean?

19 MS. REININGER: I understand. I will instruct our
20 witnesses accordingly, Your Honor.

21 THE COURT: Yeah. Okay. I appreciate your patience
22 with us.

23 Okay. Anything else? We'll get going with voir dire in
24 a few minutes. I think they're probably through their
25 orientation.

1 Mr. Hasse?

2 MR. HASSE: Nothing further on this, Your Honor.

3 THE COURT: From the government?

4 MS. REININGER: Nothing, Your Honor.

5 THE COURT: Okay. Good enough. Thank you both.

6 (VOIR DIRE PROCEEDINGS WERE HAD BUT NOT DESIGNATED AS

7 PART OF THIS RECORD.)

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11 **REPORTER'S CERTIFICATION**

12 I CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT

13 TRANSCRIPT OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

14

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